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IN THE

Supreme Court of the United States

No. 553 October Term, 1957

In Re: Estate of William J. Fitzgerald, *Deceased*

Appeal of Kathleen Fitzgerald Walsh

MOTION TO DISMISS OR AFFIRM

Appeal From the Judgment of the Supreme Court of Pennsylvania to No. 206 January Term 1957 Reported in Volume 389, Pennsylvania Supreme Court Reports, page 197

Murdaugh Stuart Madden,
Attorney for the First National Bank and Trust Company of Scranton.

Of Counsel:

Warren, Hill, Henkelman & McMenamin
Scranton Electric Building
Scranton, Pennsylvania

IN THE

Supreme Court of the United States

No. 553 OCTOBER TERM, 1957

IN RE: ESTATE OF WILLIAM J. FITZGERALD, *Deceased*

APPEAL OF KATHLEEN FITZGERALD WALSH

MOTION TO DISMISS OR AFFIRM

Appeal From the Judgment of the Supreme Court of Pennsylvania to No. 206 January Term 1957 Reported in Volume 389, Pennsylvania Supreme Court Reports, page 197

MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT

The First National Bank and Trust Company of Scranton, Scranton, Pennsylvania, by its attorney, Murdaugh Stuart Madden, moves the Court to dismiss the appeal of Kathleen Fitzgerald Walsh from a Judgment of the Supreme Court of Pennsylvania, filed in this Court to No. 553 October Term 1957, or in the alternative to affirm said Judgment, pursuant to Rule 16(1)(a) and Rule 16(1)(b).

STATEMENT

This appears to be an appeal from a Judgment of the Supreme Court of Pennsylvania affirming the dismissal by the Auditing Judge of exception filed to the adjudication in the Estate of William J. Fitzgerald, deceased.

ARGUMENT

This motion should be granted for the following reasons:

(A) Under Rule 16(1)(a), the appeal is not within the jurisdiction of this Court because it was not taken in conformity to these rules in that

(1) Notice of Appeal has not been served upon the Appellee or its counsel as required by Rule 10(2) of this Court, and

(2) The Appellant has not served upon Appellee a statement as to jurisdiction as required by Rule 12(2).

(B) Under Rule 16(1)(b), this is an appeal from the judgment of a State Court, to wit: The Supreme Court of Pennsylvania, to No. 206 January Term 1957, reported in Volume 389 Pennsylvania Supreme Court Reports, page 197, and it does not present a substantial Federal question and the judgment rests on an adequate non-Federal basis, as will appear by reference to the document filed by the Appellant to the above Number and Term, said document being designated as an Appeal and consisting of three pages of printed matter.

WHEREFORE, the Appeal should be dismissed under Rules 16(1)(a) and 16(1)(b) of this Court and Section 1254 of the Judicial Code, 28 USCA, Section 1254, or in the alternative the Judgment of the Supreme

Court of Pennsylvania should be affirmed. Moreover, if the Court should consider and act upon this improvidently taken appeal as a petition for certiorari under the provisions of the Judicial Code, 28 USCA 2103, the same lack of a substantial Federal question would compel a denial of the petition.

MURDAUGH STUART MADDEN,
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